

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA)	Criminal Case No. 7:04CR00090
)	
v.)	<u>MEMORANDUM OPINION</u>
)	By: Hon. Glen E. Conrad
SHAWN A. BANKS)	United States District Judge
)	

This case is presently before the court on the defendant's motion to suppress. For the reasons that follow, the court will deny the defendant's motion.

Factual and Procedural Background

On the night of July 7, 2004, detectives with the Roanoke City Vice Unit engaged in an undercover narcotics operation near the defendant's second-floor apartment. Approximately one week earlier, an undercover agent purchased narcotics from a suspect in the same area. After talking to the undercover agent, the suspect entered the defendant's apartment and returned to complete the sale. On July 7, 2004, the undercover agent purchased narcotics from the same suspect. The suspect again walked in the direction of the defendant's apartment prior to completing the sale. However, the detectives involved with the undercover operation were unable to see whether the suspect actually entered the defendant's apartment.

After the sale occurred, Detectives J.W. Hicks, J.L. Doss, and J.D. Carter walked to the defendant's apartment to do a "knock and talk."¹ When the detectives approached the apartment, they detected the odor of marijuana. The odor strengthened as the detectives moved toward the defendant's door. The detectives knocked on the door and heard no response. Several seconds later, the defendant opened the door. The defendant's eyes widened when he saw the detectives,

¹ At that time, the detectives did not know who lived in the particular apartment.

and the defendant took a step back. At that point, the detectives removed their weapons, pulled the defendant out of the apartment, and placed the defendant in handcuffs.

Detective Hicks and Detective Carter entered the defendant's apartment for approximately fifteen seconds to make sure that no one else was inside. While walking through the defendant's bedroom, the detectives saw a green, leafy substance on a dresser, as well as a burnt marijuana cigarette in an ashtray. The detectives walked back outside without removing any evidence.

The defendant refused to consent to a search of his apartment. Detective Doss left the scene to apply for a search warrant, while Detective Hicks and Detective Carter remained outside the apartment with the defendant. Detective Doss returned with a search warrant approximately one hour later. Upon his return, the detectives and the defendant reentered the apartment.

While the search warrant was being executed, Detective Doss asked the defendant whether there was anything the detectives needed to know. The defendant told Detective Doss that what the detectives were looking for was in the kitchen drawer. The detectives subsequently found crack cocaine in the drawer. The detectives also seized marijuana, digital scales, and over \$12,000 in cash from the defendant's apartment.

On July 29, 2004, the defendant was indicted by a grand jury for the Western District of Virginia for possession with intent to distribute crack cocaine. The defendant moved to suppress all evidence seized from his apartment, alleging that the detectives violated his constitutional rights. The court held a hearing on the defendant's motion on September 30, 2004. During the hearing, the court heard testimony from Detective Hicks and Detective Carter.

Discussion

The defendant contends that the detectives had no lawful basis for initially approaching his apartment. The defendant suggests that the detectives did not honestly intend to “knock and talk” to the resident of the apartment. However, the defendant has provided no evidence to support the assertion that the detectives acted in bad faith. As the government points out, the United States Court of Appeals for the Fourth Circuit has expressly held that:

absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned violation of the person’s right of privacy, for any one openly and peaceably ... to walk up the steps and knock on the front door of any man’s “castle” with the honest intent of asking questions of the occupant thereof- whether the questioner be a pollster, a salesman, or an officer of the law.

United States v. Taylor, 90 F.3d 903, 909 (4th Cir. 1996) (quoting United States v. Hersh, 464 F.2d 228, 230 (9th Cir. 1972)). The defendant opened the apartment door several seconds after the detectives knocked. There is no evidence that the defendant’s act of opening the door was anything but voluntary.² A voluntary response to an officer’s knock does not generally implicate the Fourth Amendment. United States v. Cephas, 254 F.3d 488, 494 (4th Cir. 2001) (“When Cephas opened his apartment door without knowing who was on the other side, he voluntarily exposed to the public any odors and such a view as one standing at the door could perceive.”).

The defendant also contends that the detectives unlawfully entered his apartment without a search warrant. Although warrantless entries into a person’s home are presumptively unreasonable, they may be justified when exigent circumstances exist. United States v. Turner, 650 F.2d 526, 528 (4th Cir. 1981). “Courts have recognized that when officers have probable cause to believe that contraband is present and, in addition, they reasonably believe that the

² The defendant contends that he asked who was at the door prior to opening it, and that he heard someone say, “it’s me.” However, there is no evidence to support this contention. The defendant did not testify at the hearing. Detective Hicks and Detective Carter testified that they did not hear any sounds from inside after they knocked on the door, and that they did not say anything before the defendant opened the door.

evidence may be destroyed or removed before they secure a search warrant, a warrantless entry is justified.” Id. In this case, the detectives detected the odor of marijuana coming from the defendant’s apartment. Both Detective Hicks and Detective Carter testified that the defendant’s reaction to their presence caused them to believe that the defendant might attempt to flee or destroy evidence. For these reasons, the detectives’ warrantless entry into the defendant’s apartment was clearly justified. See Cephas, 254 F.3d at 496 (holding that the officer’s warrantless entry was justified based on the following circumstances: (1) the defendant was aware that an officer was on his doorstep; (2) marijuana is readily destructible; and (3) the officer reasonably believed that the marijuana would have been destroyed had he waited for a warrant).

Detective Hicks testified that he and Detective Carter entered the defendant’s apartment to make sure that there was no one else inside. The detectives remained in the apartment approximately fifteen seconds. Although the detectives saw a green, leafy substance and a marijuana cigarette while they were securing the apartment, the detectives made no effort to conduct a search until they obtained a search warrant. “[B]y merely securing – and not searching – the room until the warrant arrived, the [detectives] took the minimum action necessary to preserve evidence. United States v. Brooks, 1997 U.S. Dist. LEXIS 8335, *12 (W.D. Va. June 11, 1997).

As a final argument, the defendant contends that the statement he made to Detective Doss should be suppressed. While the detectives were searching the defendant’s apartment, Detective Doss asked the defendant whether there was anything the detectives needed to know. The defendant apparently told Detective Doss that what the detectives were looking for was in the kitchen drawer. The defendant contends that “[n]o one read [him] his Miranda rights until after he confessed with Doss’ prompting.” However, Miranda safeguards are implicated only when a

suspect is subjected to interrogation in a custodial setting. Miranda v. Arizona, 384 U.S. 436, 477-478 (1966). In this case, the defendant has provided no legal authority to support the conclusion that he was subjected to a custodial interrogation. The detectives repeatedly told the defendant that he was not under arrest, and there is no indication that the defendant was threatened or pressured by Detective Doss. A custodial interrogation, as conceptualized in the Miranda opinion, “must reflect a measure of compulsion above and beyond that inherent in custody itself.” United States v. Manbeck, 744 F.2d 360, 379 (4th Cir. 1984) (quoting Rhode Island v. Innis, 446 U.S. 291, 300 (1980)). The court concludes that the defendant was not subjected to a custodial interrogation at the time he made the statement in question.

For the reasons stated, the defendant’s motion to suppress must be denied. The Clerk is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

ENTER: This 4th day of November, 2004.

/S/ Glen E. Conrad

United States District Judge

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UNITED STATES OF AMERICA)	Case No.: 7:04CR00090
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v.)	<u>ORDER</u>
)	By: Hon. Glen E. Conrad
SHAWN A. BANKS)	United States District Judge

This case is before the court on the defendant's motion to suppress. For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

that the defendant's motion is **DENIED**.

The Clerk is directed to send a certified copy of this Order and the attached Memorandum Opinion to all counsel of record.

ENTER: This 4th day of November, 2004.

_____/S/ Glen E. Conrad_____
United States District Judge